



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB- 173270

PRELIMINARY RECITALS

On March 30, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03(4), to challenge a decision by the Washington County Department of Social Services regarding Child Care benefits (CCB). The hearing was held on May 12, 2016, by telephone.

The issue for determination is whether the agency correctly denied petitioner's application for child care benefits due to being over the income limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], ES Lead Worker
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On March 22, 2016 petitioner applied for CCB.
3. Petitioner's household of 2 had a monthly gross income of \$2888.52 for the month of March 2016, and \$2533.06 for April 2016.
4. On March 24, 2016 the agency issued a notice of decision to petitioner stating that CCB was denied because the household was over the income limit. Exhibit 1.

DISCUSSION

The Wisconsin Shares Child Care Subsidy Program is regulated under Wisconsin Statutes §49.155 and Wisconsin Administrative Code DCF Chapter 201. An applicant for CCB must meet the program's income guidelines to be financially eligible for Wisconsin Shares child care assistance. The income limit for new applicants, including cases that have closed for more than thirty days, is 185% federal poverty level (FPL) for the Assistance Group family size (but excludes foster parents, kinship care parents who receive kinship care payments and have a court order for the child's care, and subsidized guardians/interim caretakers in Milwaukee County. See *Wisconsin Shares Child Care Assistance Manual*, §1.5.1.1, available online at <http://www.dcf.wi.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>; see also Wis. Stat. §49.155(1m)(c).

The agency tested petitioner's income level against the 185% FPL. Petitioner is not a foster parent, kinship care parent who receives kinship care payments and has a court order for the child's care, nor a subsidized guardian/interim caretaker in Milwaukee County. It was undisputed that the household income was correctly determined (see Finding of Fact #3). The 185% limit for a household of 2 at the time the application was made was \$2470. See Operations Memo #16-02 at <https://www.dhs.wisconsin.gov/dhcaa/memos/16-02.pdf>.

There is also no evidence that petitioner qualifies for any of the disregards in counting the gross income. Per the *Manual*, §1.5.3, I provide the following:

The income types listed below are excluded from the child care budget:

- Repayments that are withheld from Social Security, Unemployment Compensation or other programs that do not base eligibility on income and assets.
- Child Support Payments: Court-ordered child support or family support payments if the aggregate amount paid to the child care Assistance Group members is \$1,250.00 or less per month. Note: If the aggregate amount exceeds \$1,250 per month, the entire amount is counted as income in the child care budget.
- Earned Income of Minor Dependents.
- Earned Income Credit (EIC), income received under the federal/state EIC, or payments made by an employer under the federal advanced EIC.
- State and federal tax refunds and Homestead Credit Payments.
- Education Programs: Higher Education Act of 1965 (PL 89-329) and the Employment Skills Advancement Program.
- Educational Aid: educational aid received under a state or federal program or scholarship funds used for tuition and books.
- Work Study Income.
- Income received for Foster Care, Kinship Care, Subsidized Guardianship, or Adoption Assistance payments.
- Loans (not including educational aid).
- Reverse Mortgage Loan Proceeds (1993 Wisconsin Act 88).
- Wisconsin Works (W-2) Income including Job Access Loans.

- In-Kind Income: non-cash reimbursements such as meals, clothing, housing, and garden produce.
- Benefits for Students-Aged 18 Years Old.
- Benefits received under W-2 and Wisconsin Shares.
- Reimbursements: money paid to the individual to reimburse actual expenses incurred or paid, or both. May include a per diem allowance for travel, uniforms, transportation, out-of-pocket expenses, medical reimbursements, or reimbursement for a volunteer's out-of-pocket expenses incurred in the course of his/her work.
- Gifts: Cash gifts, such as for birthdays, graduation, and Christmas.
- Earmarked Funds (previously titled "Windfalls"): Any amount received that is earmarked and used for the purpose it was paid, such as back medical bills from an accident or injury, funeral and cemetery costs, and replacement or repairs. For medical services which can be provided only at a future date. Disregard any amount earmarked for those services, provided there is a signed agreement specifying: the source and amount of the settlement; the purpose for which it is earmarked; that the amount is held in its own account; and that it is agreed to and understood that if all or part of the settlement is used for a purpose other than for what it is earmarked, that amount used will be considered available income and counted when determining eligibility and copayments.
- Federally-Funded Benefits: Any income from sources required to be disregarded by federal or state law. Such sources include, but are not limited to: Nutrition Program benefits from National School Lunch Act (PL 79-396), Food Stamp Act of 1977 (PL 88-525), Child Nutrition Act of 1996 (PL 89-642); Indian Tribal Federal Settlements; Housing Act of 1949 (PL 81-171); Older Americans Act (PL 89-73); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646); Robert T. Stanford Disaster Relief and Emergency Act (PL 93-288); Housing and Community Development Amendments of 1978 (PL 95-557), however, wages from the act may be counted as income; Low Income Energy Assistance Act of 1981 (PL 97-35); Old Age Assistance Claims Settlement Act (PL 98-500); Workforce Investment Act: WIA for Adults, Rapid Response, and Dislocated Workers, National Emergency Grants, Trade Adjustment Act, unless specifically earmarked for child care expenses; Refugee Resettlement Reception and Placement income for Iraqi and Afghan immigrants who have been granted Special Immigration Visa's (SIV's) under Section 1059 of the NDIA; PL 109-163.

And per the *Manual*, §1.5.4:

The following types of income are excluded as income in the child care budget under the limited circumstances as detailed below:

- AmeriCorps and or VISTA (PL 93-113): Exclude income if the stipend amount divided by the number of hours of activity equals less than minimum wage.
- Operation Fresh Start: Disregard Operation Fresh Start income unless the agency director verifies that participants are receiving the equivalent of minimum wage. If the Operation Fresh Start participant is receiving minimum wage or more, count the income in determining gross income.
- Indian Tribal Judgment Funds Use or Distribution Act (PL 93-134): Disregard per capita shares and income of \$2,000 per year or less.
- Rehabilitation Act of 1973 (PL 93-112): Disregard wages, allowances or reimbursements for transportation or personal assistance services costs paid to reasonably accommodate an employee, such as a vehicle modification made to accommodate a disability or a payment by the Division of Vocational Rehabilitation to support a rehabilitation plan.

Having no evidence that the agency's income determination was wrong, I must uphold the denial. I understand that petitioner has expenses which affects her gross income. However, I cannot bypass the statutory requirements for the financial eligibility because she believes it would be fair. It is the long-

standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

If the household income decreases, there is nothing prohibiting petitioner from reapplying for CCB to see if she is eligible for the CCB benefits going forward.

CONCLUSIONS OF LAW

The agency correctly denied child care benefits to petitioner for being over the income limit as of March 2016.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

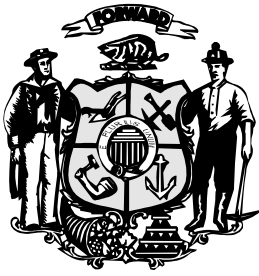
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of July, 2016

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 6, 2016.

Washington County Department of Social Services
Child Care Benefits